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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 000940

SIPDIS

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TAGS: PREL PGOV TU

SUBJECT: MOVE ALLOWING CIVILIAN COURTS TO TRY MILITARY PERSONNEL STIRS CIV-MIL TENSIONS

REF: ANKARA 834

Classified By: DCM Doug Silliman, 1.4 (b,d)

¶1. (C) Summary: Tension between the civilian government led by PM Erdogan's party and the military is sharpening, sparked by the military's denial of any involvement in an alleged secret military plan to undermine the government (reftel) and the government's successful effort to rush through legislation allowing civilian courts to try military personnel engaged in "coup plotting". Military chief GEN Basbug met with Erdogan on June 29 and reportedly complained about not being consulted about the changes; the legislation was also reportedly discussed at a marathon June 30 National Security Council meeting. The legislation will likely be vetoed or overturned by the Constitutional Court, but may pave the way for a debate on amending the 1982 constitution. This battle over the jurisdiction of military and civilian courts is part of a broader debate between those seeking greater civilian control over the military and those who fear that this move in the name of democracy is a guise to damage the military and further strengthen the hand of those who want to erode Turkey's secular traditions. The tension linked to this debate is unlikely to ebb. This issue will continue to be a significant drain on the energy and attention of Turkey's political and military leadership.  
End Summary.

Midnight Maneuver

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¶2. (C) Turkish media has seized on the ruling Justice and Development Party's successful effort to pass legislation amending the Turkish Penal Code and the Criminal Procedure law to allow civilian courts to try military personnel for crimes, including crimes against the state. The law was passed in the early hours of June 25 (Friday) as parliament was scrambling to complete its legislative agenda before recess began that day. Opposition Republican People's Party (CHP) leader Deniz Baykal has called the move a "midnight coup," although members of his and other opposition parties present that night did not object to the legislation. Seref Iba, a legal expert and staffer at the parliament's legislative affairs office who followed the process closely confirmed to us that there was little debate that night as there was a rush to complete the work of parliament, and he speculated that the opposition, and even some in the AKP, were not aware of the implications of the changes to the laws.

Changing One Word

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¶3. (C) Iba explained to us that the key change was in the

Criminal Procedure Law. The law, which previously stated that the military court has jurisdiction over military personal, "including in times of war and states of emergency," was altered to read: "in case of war and states of emergency." Iba agreed with press commentators who said the change of one word effectively strips the military court of its mandate. He said the revision was deemed necessary because, under the previous law, civilian prosecutors need the approval of their military counterparts to prosecute military officers in civilian courts. The goal of the change, according to Iba, was to prevent the military from having a de facto veto over civilian prosecution of military officers accused of committing crimes, including coup plotting. Iba confirmed that the military was not consulted in the process of preparing the legislation.

Military Reaction

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¶4. (C) Chief of the Turkish General Staff (TGS) GEN Ilker Basbug did not appear aware of the change in legislation during his June 25 press conference, in which he reaffirmed the Military Prosecutor's finding that the TGS was not involved in the drafting of the alleged "Plan to Counter Fundamentalism," and that the document published by the daily Taraf (reftel) had no legal standing as it was only a photocopy. During the press conference, Basbug said the military will not continue investigations against Naval Infantry Colonel Dursun Cicek, the alleged author of the "Plan," stating that the TGS does not act on rumors. According to multiple media reports, Basbug met with Erdogan

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and Justice Minister Sadullah Ergin on June 29, after news of the legislation broke, to complain about not being consulted in advance.

¶5. (C) At the bimonthly National Security Council (MGK) meeting on June 30, which lasted for over seven hours, the military reportedly questioned the constitutionality of the legislation and warned that, if signed into law, the legislation would demoralize the armed forces. The brief MGK statement issued after the meeting gave an apparent nod to the military's concern by noting that the Council members expressed their reactions and thoughts to the "publications and pronouncements" aimed at "undermining state institutions" (an apparent reference to Taraf daily's publication of the alleged secret plan). The statement reaffirmed that "these types of activities will not be useful for our country."

Col Cicek Interrogated, Arrested

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¶6. (C) As the MGK meeting was taking place on June 30, Turkish media reported that Navy Infantry Colonel Cicek, along with eight other navy captains were interrogated by the Ergenekon prosecution team. Cicek was placed under arrest and held in a military prison in Istanbul while four of the navy captains were placed under "judicial control." (Comment: Cicek's interrogation and arrest would not have been possible without the military's consent. End Comment). Cicek was reportedly released on July 1, after his lawyer appealed the detention.

Under Presidential Review

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¶7. (C) The revised legislation must still be signed by President Gul to become law, and the president has 15 days to review it. The presidency has already signaled that this legislation is being reviewed closely, and legal experts, including Iba, expect Gul will return the legislation to parliament for further consideration. CHP leader Baykal stated at a party meeting June 30 that he expected President Gul to veto the legislation or for the Constitutional Court to overturn it. (Comment: The proposed change does in deed

seem to conflict with the Turkish Constitutional provision 145 that gives military courts jurisdiction over military personnel. End Comment)

¶18. (SBU) Several papers reported that President Gul hosted PM Erdogan, CHOD Basbug, Deputy PM Cemil Cicek and Justice Minister Ergin for a meeting immediately following the June 30 National Security Council's marathon session to discuss the legislation. Basbug reportedly expressed his concerns about the legislation at the meeting. According to Milliyet columnist Fikret Bila, a well-connected journalist, an agreement was reached between Basbug and Erdogan for the army and the government to establish a joint commission to examine the legislation and to submit their conclusions to the president.

Paving the Way for Constitutional Reform

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¶19. (C) Even if the law is signed by President Gul, many experts believe that the law would not survive a constitutional challenge. Retired Administrative Court (Yargitay) Chief Justice Sabih Kanadolgu's stated during a television interview that the new legislation violates existing constitutional provisions establishing the military court's mandate and that the revised wording will not survive a constitutional challenge. Parliamentary staffer Seref Iba agreed with this assessment, and thought that the legislation, once vetoed or overturned by the Constitutional Court, will likely pave the way for a broader debate about the extent to which the existing constitution, passed in 1982 while Turkey was still under military rule, should be amended.

Comment

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¶10. (C) This current controversy over the appropriate jurisdiction of civilian and military courts is just one aspect of a broader debate about the scope of constitutional reforms that have been discussed since July 2007. The tensions surrounding the legislation also reflect the

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profound struggle within Turkey between those who see a need for further civilian control over the military and the secular elite who fear that these efforts in the name of democracy are a guise to damage the military and further strengthen the hand of those who want to erode Turkey's secular institutions. Mutual distrust between these two camps runs deep, and the government's failure to consult the military prior to initiating this legislative change did not help. Erdogan and Basbug have been able to manage flare-ups in civ-mil tensions thus far, but this episode has certainly strained their relationship. The tension, while unlikely to boil over, is also unlikely to ebb: AKP is confident its poll numbers are bolstered when it confronts the military, while the military feels compelled to defend itself. The tension will surely continue to absorb the attention of Turkey's political and military leaders for the foreseeable future.

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